

NEW JERSEY
CEMETERY BOARD

6/3/2003

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L.H.G.

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STATE OF NEW JERSEY
DEPARTMENT OF LAW & PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
CEMETERY BOARD

IN THE MATTER OF A DISCIPLINARY
ACTION AGAINST THE CERTIFICATE OF

ROSEMOUNT MEMORIAL PARK
CA #160

Administrative Action

FINAL DECISION AND ORDER
AFTER UPL EXPLANATION

This matter was opened to the New Jersey Cemetery Board (hereinafter the "Board") on an investigation of the compliance by Rosemount Memorial Park (hereinafter "Respondent") with the requirements of N.J.S.A. 8A:9-4 that the payment or the offer of payment of commissions for the sales of interment space be made only to a duly licensed cemetery salesperson.

On or about December 13, 2002, a letter was sent to Mr. Angel Luis Rodriguez III, who had applied to the Board for licensure as a salesperson at Respondent's cemetery, and to Respondent, which advised that the application of Mr. Rodriguez had been approved and that a license would be issued upon receipt of the fee, payable within two weeks by certified check or money order.

No response having been received, a follow up letter was sent to Respondent on or about January 28, 2003, advising that Mr. Rodriguez's temporary license had expired on December 13, 2002, and warning Respondent that Mr. Rodriguez could not lawfully sell interment space until he paid the fee and was issued a regular license. Payment was again requested and Respondent was asked to verify Mr. Rodriguez's continued employment with Respondent.

On or about March 7, 2003, a third letter was sent to Respondent advising that there had been no response to the previous letters and requesting once again the status of Mr. Rodriguez's employment with Respondent. The third letter reiterated that Mr. Rodriguez did not possess a valid Cemetery Salesperson's License issued by the Board, and therefore could not lawfully be engaged in selling interment space.

On or about March 12, 2003, the Board office received a letter dated March 10, 2003 from Respondent. The letter advised that Mr. Rodriguez was still employed by Respondent, and was currently working as a "Sales Counselor for Rosemount Memorial Park." The license fee had still not been paid. The Board reviewed this information on April 10, 2003, and concluded that Respondent was paying or offering to pay an unlicensed person commissions as a salesperson in violation of N.J.S.A. 8A:9-4.

On April 23, 2003, a Uniform Penalty Letter (hereinafter "UPL") was sent to Respondent setting forth the initial findings of the Board and offering Respondent the opportunity to settle this matter by acknowledging the violation and paying a civil penalty in the amount of \$250.00. Alternatively, Respondent was given the options of either requesting a hearing before the Board or submitting a written explanation and waiving Respondent's right to a hearing.

Respondent submitted a written explanation dated April 28, 2003, in which it maintained that Mr. Rodriguez had sent a personal check to the Board to pay his license fee, and had not received the check back. Respondent stated that Mr. Rodriguez therefore, "assumed that the payment

was received and continued selling." A supporting statement dated April 30, 2003, signed by Mr. Rodriguez, was attached to Respondent's explanation. Mr. Rodriguez asserted in the statement that he had sent a personal check to the Board on an unspecified date after December 13, 2002, and that he had thereafter assumed he was a fully licensed salesperson for Respondent. No copy of the personal check was provided and Board records indicate that no payment was received until March 13, 2003.

Respondent's explanation also advised that Mr. Rodriguez had been sent to pay the license fee in person following receipt of the Board's third letter on March 7, 2003. Board records indicate that the fee was paid on March 13, 2003; the day on which the Board office telephoned Respondent after receiving its letter on March 12, 2003 confirming Mr. Rodriguez's continued employment as a salesperson. Respondent's explanation also argued that \$250.00, the amount of penalty preliminarily assessed for the violation, was excessive and should be reconsidered by the Board.

At its meeting on May 8, 2003, the Board considered the UPL and Respondent's explanation. With respect to charges that Respondent had been paying or offering to pay an unlicensed person commissions as a salesperson between December 13, 2002 and at least May 10, 2003, in violation of N.J.S.A. 8A:9-4, the Board found that there were no material facts in dispute. Accordingly, the Board finds that Respondent failed to conform with statutory and/or regulatory obligations as set forth in the UPL, and thus it concludes that a violation of N.J.S.A. 8A:9-4 occurred. The Board noted that the penalty assessed is substantially less than the \$10,000.00 maximum amount which could be imposed pursuant to N.J.S.A. 45:1-25 and concluded that \$250.00 was not excessive in view of the repeated warnings to Respondent.

Based on the foregoing:

IT IS on this 3rd day of June, 2003,

ORDERED that:

1. Respondent shall pay to the Cemetery Board a civil penalty in the total amount of \$ 250.00 for the violation as set forth in the UPL and found as detailed above. Said payment shall be made by certified check or money order payable to the New Jersey Cemetery Board and shall be delivered within ten (10) days of service of this order to Susan H. Gartland, the Executive Director of the Board at P. O. Box 54036, Newark, New Jersey 07101. Failure to remit the payment required by this Order will result in the filing of a certificate of debt.

2. Respondent shall cease and desist from engaging in any of the conduct found herein to be unlawful.

NEW JERSEY STATE
CEMETERY BOARD

BY: 
Frank J. DeGeeter, Jr.
President



UNITED STATES
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SERIAL NUMBER
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U.S. DOLLARS AND CENTS

250.00

AMOUNT: TWO HUNDRED FIFTY DOLLARS & 00¢*****

PAY TO
NJ State Quarter Board

NEGOTIABLE ONLY IN THE U.S. AND POSSESSIONS
SEE REVERSE WARNING

ADDRESS
PO BOX 45036
NEWARK NJ 07101

FROM
Angel Rodriguez

CLERK
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C.O.D. NO. OR
USED FOR

ADDRESS
25 Daniel St
Pat Reading NJ 07014

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Appl #596697